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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|------------------------|----------------------------|------------------|
| 10/629,573 | 07/30/2003 | Jeffery James Cheetham | | 6462 |
| 25628 | 7590 | 02/10/2006 | | |
| LAW OFFICES OF WILLIAM H. HOLT 12311 HARBOR DRIVE WOODBRIDGE, VA 22192 | | | EXAMINER KEASEL, ERIC S | |
| | | | ART UNIT 3754 | PAPER NUMBER |

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/629,573 | CHEETHAM ET AL. |
| | Examiner Eric Keasel | Art Unit 3754 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 November 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,4-14 and 17-19 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,4-14 and 17-19 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 30 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 4 is objected to because, in line 6, it appears that “pen” should be --open--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4-8, 10-14, 17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Aoyagi et al. (US Patent Application Publication Number 2001/0053511).

Aoyagi et al. disclose a dental material container comprising a body (1) including a first open end and a dispensing member (4a) at a second end; a receptacle (2) received in the first open end of the body, the receptacle including a plunger (3) received in an open end thereof and a first wall member such that a first chamber is defined between the plunger and said first wall member (2a); a second wall member (1c) separating said body from said dispensing member such that a second chamber is defined between the second wall member and said first wall member, wherein initial depression of said plunger increases pressure within said first chamber, rupturing said first wall member and thereby causing dental material within said first chamber to be expelled past said first wall member and mix mixed with dental material in said second chamber and further depression of the plunger causes the receptacle to move further into the

body, thereby increasing pressure within the second chamber and rupturing the second wall member so that mixed dental material is expelled past the second wall member to the dispensing member; wherein the body of the dental material container and the receptacle are cylindrical and the first wall member is arranged transversely of the longitudinal axis of the cylindrical receptacle at an opposite end from the open end of the receptacle; wherein the receptacle includes a circumferential rib adjacent the open end thereof arranged to engage with a circumferential recess adjacent the first end of the body when the receptacle is inserted into the body; wherein the first wall member includes a central weakened portion; wherein the central weakened portion comprises a relatively thin portion of the first wall member; wherein the second wall member includes a central weakened portion; wherein the dispensing member includes a dispensing nozzle (4a) and a circumferential rib arranged to snap fit (see the embodiment of Fig. 4) with a circumferential groove adjacent the body of the dental material container; wherein the dispensing member is integrally formed with the body of the dental material container and includes a dispensing nozzle; wherein the dispensing member includes a screw connection (see the embodiments of Figs. 1-3) on the body of the dental material container and a dispensing nozzle arranged to engage with the screw connection; wherein the dispensing nozzle is curved; wherein the second wall member is provided as a separate disc member arranged to be inserted into the body of the dental material container; and wherein the body of the dental material container includes a means for expelling air from within the body during use (see paragraph 0025).

4. Claims 1, 4, 6-11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Mukasa et al. (US Patent Number 6,386,872).

Mukasa et al. disclose a dental material container comprising a body (1) including a first open end and a dispensing member (4a) at a second end; a receptacle (2) received in the first open end of the body, the receptacle including a plunger (3) received in an open end thereof and a first wall member (2c) such that a first chamber is defined between the plunger and said first wall member; a second wall member (1c) separating said body from said dispensing member such that a second chamber is defined between the second wall member and said first wall member, wherein initial depression of said plunger increases pressure within said first chamber, rupturing said first wall member and thereby causing dental material within said first chamber to be expelled past said first wall member and mix mixed with dental material in said second chamber and further depression of the plunger causes the receptacle to move further into the body, thereby increasing pressure within the second chamber and rupturing the second wall member so that mixed dental material is expelled past the second wall member to the dispensing member; wherein the body of the dental material container and the receptacle are cylindrical and the first wall member is arranged transversely of the longitudinal axis of the cylindrical receptacle at an opposite end from the open end of the receptacle; wherein the first wall member includes a central weakened portion; wherein the central weakened portion comprises a relatively thin portion (2e) of the first wall member; wherein the second wall member includes a central weakened portion; wherein the central weakened portion comprises a relatively thin portion (1e) of the second wall member; wherein the dispensing member includes a dispensing nozzle and a circumferential rib arranged to snap fit with a circumferential groove adjacent the body of the

dental material container; wherein the dispensing member is integrally formed with the body of the dental material container and includes a dispensing nozzle; and wherein the dispensing nozzle is curved.

5. Claims 1, 4, 6-9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Baumann (US Patent Number 3,684,136).

Baumann discloses a container comprising a body (51) including a first open end and a dispensing member at a second end; a receptacle (32) received in the first open end of the body, the receptacle including a plunger (52) received in an open end thereof and a first wall member (33) such that a first chamber is defined between the plunger and said first wall member; a second wall member (55) separating said body from said dispensing member such that a second chamber is defined between the second wall member and said first wall member, wherein initial depression of said plunger increases pressure within said first chamber, rupturing said first wall member and thereby causing dental material within said first chamber to be expelled past said first wall member and mix mixed with dental material in said second chamber and further depression of the plunger causes the receptacle to move further into the body, thereby increasing pressure within the second chamber and rupturing the second wall member so that mixed dental material is expelled past the second wall member to the dispensing member (please note, although Baumann does not explicitly disclose this method of use, the reference meets the limitation because further movement of the plunger would increase the pressure in the second chamber and rupture the weakened portion of the second wall member).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1, 4, 6-9, 11, 12, 14, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann (US Patent Number 3,684,136) in view of Kindt-Larsen et al. (US Patent Number 5,114,240).

Baumann discloses a container comprising a body (51) including a first open end and a dispensing member at a second end; a receptacle (32) received in the first open end of the body, the receptacle including a plunger (52) received in an open end thereof and a first wall member (33) such that a first chamber is defined between the plunger and said first wall member; a second wall member (55) separating said body from said dispensing member such that a second chamber is defined between the second wall member and said first wall member, wherein initial

depression of said plunger increases pressure within said first chamber, rupturing said first wall member and thereby causing dental material within said first chamber to be expelled past said first wall member and mix mixed with dental material in said second chamber and further depression of the plunger causes the receptacle to move further into the body, thereby increasing pressure within the second chamber and rupturing the second wall member so that mixed dental material is expelled past the second wall member to the dispensing member (please note, although Baumann does not explicitly disclose this method of use, the reference meets the limitation because further movement of the plunger would increase the pressure in the second chamber and rupture the weakened portion of the second wall member). Alternatively, the Baumann reference could be modified by Kindt-Larsen et al. to disclose the use of the application of pressure rupturing the second wall member.

Kindt-Larsen et al. disclose a material container comprising a body (18) including a first chamber (19) and a second chamber (11) separated by a first wall member (13, 14), a dispensing member (26) separated from the second chamber by a second wall member (22), and a means (15, 17) for applying pressure to material contained within the first chamber, wherein actuation of the means for applying pressure causes material within the first chamber to be expelled through the first wall member and mix with dental material in the second chamber and further actuation (see Figs. 5 and 6) of the means for applying pressure causes the mixed material to be expelled through the second wall member to the dispensing member; wherein the body has a first open end and a second end adjacent which is located the dispensing means, the first and second chambers being located within the body in use and the means for applying pressure comprising a plunger arranged to be inserted into the first open end of the body; wherein the first wall member

includes a central weakened portion (14); wherein the central weakened portion comprises a relatively thin portion of the first wall member; wherein the second wall member includes a central weakened portion; wherein the central weakened portion comprises a relatively thin portion of the second wall member; wherein the dispensing member is integrally formed by a screw connection on the body of the material container and a dispensing nozzle arranged to engage with the screw connection; wherein the second wall member is provided as a separate disc member arranged to be inserted into the body of the material container; wherein the body of the material container includes a means for expelling air from within the body during use; and wherein the means for expelling air comprises longitudinal grooves on inner surfaces of the body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the application of pressure on the plunger to rupture the second wall member to dispel the contents of the dispenser as taught by Kindt-Larsen et al.

Response to Arguments

8. Applicant's arguments filed November 16, 2005 have been fully considered but they are not persuasive regarding the Aoyagi et al. and Mukasa et al. references. Although both Aoyagi et al. and Mukasa et al. disclose a pointed end of the plunger to aid in rupturing the first and second wall members, both reference anticipate the amended claims because depression of the plunger increases pressure in the chambers and ruptures the wall members.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric Keasel
Primary Examiner
Art Unit 3754